

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company	:	
	:	
Proposed addition of a new service	:	
called Rider Purchase of	:	
Receivables, (tariffs filed on	:	Docket No. 16-0033
December 18, 2015)	:	
	:	
	:	
The Peoples Gas Light and Coke	:	(Cons)
Company	:	
	:	
Proposed addition of a new service	:	Docket No. 16-0034
called Rider Purchase of	:	
Receivables, (tariffs filed on	:	
December 18, 2015)	:	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

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**REPLY BRIEF ON EXCPETIONS OF THE STAFF
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Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission (“Commission”), respectfully submits this Reply Brief on Exceptions (“RBOE”) to the Briefs on Exceptions (“BOE”) filed in the above-captioned matter.

I. INTRODUCTION

Initial Briefs (“IB”) and Reply Briefs (“RB”) were filed on August 30, 2016 and September 8, 2016, respectively, by Staff, North Shore Gas Company (“North Shore”) and the Peoples Gas Light and Coke Company (“Peoples Gas” or “Peoples”) (jointly, “the Utilities” or “the Companies”); the People of the State of Illinois by Attorney General Lisa

Madigan (“AG”); the Citizens Utility Board (“CUB”), and jointly by the Retail Energy Supply Association (“RESA”) and the Illinois Competitive Energy Association (“ICEA”) (jointly “RESA-ICEA”).

The Administrative Law Judge (“ALJ”) issued a proposed order (“PO” or “ALJPO”) on October 6, 2016.

On October 13, 2016, Staff, the AG and CUB filed exceptions to the ALJPO. The Companies, ICEA and RESA did not take exception to the ALJPO.

Staff’s reply to the AG’s BOE and CUB’s BOE follows. The absence of a response by Staff to a specific issue raised in CUB’s BOE or the AG’s BOE, should not be construed as agreement with those positions and/or arguments.

II. ARGUMENT

A. The entire record must be considered by the Commission when determining whether Rider POR is just and reasonable

The parties agree on certain legal standards that apply to the Companies’ proposed Rider PORs. For instance, Staff agrees with the AG and CUB that in order for the Commission to approve Rider POR, it must be shown that: (1) the rider is just and reasonable, (2) the burden is on the utilities to establish the justness and reasonableness of Rider POR and (3) with respect to justness and reasonableness, Rider POR must be shown to be both just and reasonable to the utility and customers. (AG BOE, 5-6; CUB BOE, 2.) However, AG and CUB appear to be suggesting that the Commission cannot consider evidence offered by Staff and RESA-ICEA when determining whether Rider POR is just and reasonable. To the extent the AG and CUB are suggesting that the Commission can only consider evidence offered by the North Shore and Peoples Gas to find that Rider POR is just and reasonable, Staff disagrees. The AG and CUB in their

respective BOEs seem to suggest that is their position. That appears to be the AG's position, when the AG states "... PGL/NS failed in its burden of proving that its proposed tariff is reasonable – a burden that cannot be shifted to other parties." The AG then goes on to address evidence provided by RESA-ICEA and Staff addressing customer benefits. (AG BOE, 6.) CUB appears to take the same position in its BOE when it states "[e]ven if the Commission were to accept evidence presented by RESA-ICEA as a substitute for the utility's failed burden, insufficient evidence of customer benefits of Rider POR exist in this record." (CUB BOE, 5.) If that is the position of the AG and CUB, the Commission should reject it as it is inconsistent with the Illinois Public Utilities Act ("PUA").

While the Companies on their own have provided sufficient evidence addressing the justness and reasonableness of Rider POR (NS-PGL Reply Brief, 2-3), under the PUA the Commission is not limited to a utilities' evidence in order make a finding of justness and reasonableness of a proposed tariff. Under the PUA the Commission must consider the entire record to support its findings. ("The court will reverse a Commission rule, regulation, order or decision, in whole or part, if it finds that: A. the findings of the Commission are not supported by substantial evidence based on the entire record of evidence presented to or before the Commission for and against such rule, regulation, order or decision; or ..." 220 ILCS 5/10-201(e)(iv)(A)(emphasis added) The entire record in this proceeding for Rider POR would include not only the Companies' evidence but the testimony offered by both Staff and RESA-ICEA. Therefore, if the AG and CUB are suggesting that the Commission cannot consider RESA-ICEA's and Staff's evidence addressing the justness and reasonableness of Rider POR to support a just and reasonableness finding, the Commission should reject that argument.

B. The Commission should find Rider POR to be just and reasonable

CUB and the AG both argue in their BOEs that the Utilities did not meet the burden of proof needed for the Commission to conclude that Rider POR is just and reasonable. (CUB BOE, 3-5; AG BOE, 4-6.) CUB, in addition, argues that claims of lower rates resulting from Rider POR are “specious” and claims of benefits are “unsubstantiated.” (CUB BOE, 11-13.) Similarly, the AG argues that there is a lack of record evidence that approval of Ride POR will provide tangible customer benefits. (AG BOE, 6-9.) The AG goes even further in its BOE, claiming “[c]ustomers [w]ill [b]e [h]armed by Commission Approval of Rider POR [.]” (AG BOE, 10) CUB and the AG are arguing that Rider POR cannot be just and reasonable, simply because they do not like the Small Volume Transportation (“SVT”) program.

As Staff noted in its RB, Rider POR is not SVT. (Staff RB, 8.) The Commission does not need to conclude that any or all subsets of customers are better off under Rider CFY for it to rule that Rider POR is just and reasonable. Since the rider’s startup costs are not allocated to retail customers, they are not relevant to a net benefits test. Staff also pointed out in its IB and RB that it is almost certain that POR reduces AGS costs.¹ (Staff IB, 11-12; Staff RB, 6.) And exactly how AGS will react to those lower costs may be uncertain, but economics predicts that retail prices will decrease. Id.

As Staff pointed out in its IB and RB, the rider is just and reasonable due to its design. Id. Not only are all startup costs allocated to AGS, it recovers all expected uncollectibles via a fixed discount rate. (Staff IB, 9-11; Staff RB 6-11.) The discount rate

¹ In its BOE, the AG notes that Dr. Rearden “is not aware of any studies demonstrating this belief [lower costs] to be true.” (AG BOE, 9) Though it would be odd indeed for AGS to request a service that raised their costs.

for Rider POR is initially set at the existing rate. So sales customers are not affected by the initial discount rate. Then, thirty-six months after the program begins, a separate discount rate is set that is based just on Rider POR customer uncollectibles. Again, sales customers are unaffected by POR uncollectibles.

Both CUB and the AG are concerned that Rider POR will harm LIHEAP. Both cite the recent decision by the NYPSC to exclude unregulated gas suppliers from its low income assistance program as an example of what could happen in Illinois. (CUB BOE, 7; AG BOE, 14.) This argument rehashes its concern that prices will increase. Staff did concede that under certain conditions; LIHEAP could become more pressured after POR is implemented. Dr. Rearden noted that relatively smaller price decreases and relatively larger number of switches of LIHEAP customers to transportation service increases the likelihood that the LIHEAP fund comes under increased pressure. (Staff RB, 9.) This formulation requires more information to reach a conclusion than is available at this time. In other words, the effect on LIHEAP is very speculative.

In its RB, Staff also suggested that the Commission could direct Staff to more closely monitor that fund in order for the Commission to be able to quickly consider any problems. Staff has also suggested that Rider POR might generate data that indicates the retail prices that customers actually pay. (Staff RB, 9-10.) Further, in its BOE, Staff requested that the Commission clarify the access given to Staff in the PO. (Staff BOE, 2-3.) In Staff's opinion, such access could mitigate concerns the Commission might have about the effect of Rider POR on LIHEAP and Rider CFY customers.

CUB argues that the uniform discount rate establishes "a ceiling on the amount of uncollectibles paid by a POR Supplier and shifting the risk of uncollectibles above this amount to PGL/NS (and, if not recovered, to all their delivery customers) [.]" (CUB BOE,

15.) As noted in Staff's RB, it's not clear what this means. (Staff RB, 10.) After 36 months of experience, there will be separate discount rates for sales and SVT customers. The discount rate for each will depend on what happens to uncollectibles within each group. Each will consist of a shifting group of customers. (Staff IB, 10-11.) There is no way to estimate the effect of Rider POR on each group discount rate. The Commission should reject this argument. (Staff RB, 10.)

Based upon the above and for the reasons previously set forth by Staff in its IB, RB and testimony the Commission should reject CUB's and the AG's exceptions to the PO and accept Staff's proposed clarification.

C. The Commission should reject CUB's alternative exception #2

CUB offers Alternative Exception #2 to limit the amount of receivables that can pass through Rider POR to the PGA price if the Commission does not reject Rider POR. It asserts that this proposal protects consumers from excessively high SVT prices. (CUB BOE, 18-20.) CUB further supports its Alternative Exception #2 by arguing that the marketers own arguments support the exception, noting that marketers object to its proposal, because it erases the benefits of POR: "This allegation proves CUB's point that AGS rates exceed the utility price-to-compare because that statement can only be true if AGS rates are consistently above the utility PGA." Id. at 19. However, this statement ignores the variability of both PGA rates and retail prices. Marketers could never be sure of the relationship between their current, potentially variable, prices and an unknown and variable PGA. Any positive deviation between the retail price and the PGA rate means two bills to the customer, with its attendant confusion both for the customer and higher costs for the supplier. Due to this variability, the same customer could be subject to the

limit in some months but not others. This unnecessarily complicates AGS pricing and increases their administrative difficulties. In sum, the limit drastically reduces the benefits from POR, and so undermines the reasons for the service. (Staff IB, 14-15; Staff RB, 10.)

Based upon the above and for the reasons previously set forth by Staff in its IB, RB and testimony the Commission should reject CUB's Exception #2.

D. The AG mischaracterizes Staff's testimony and the Companies' Rider POR proposal with respect to the carrying charge

The AG BOE states:

As noted by Staff witness Rochelle Phipps, while the **primary proposal** is for PGL/NS to collect capital costs plus a carrying charge associated with implementing Rider POR from ARGIS, there is a possibility that the utility will face unrecovered capital costs associated with implementing the tariff at some point in time. Staff witness Ms. Phipps recommended in testimony that should the situation arise where the utilities sought recovery from ratepayers of unrecovered capital costs, the rate of return on investment should be set at a lower rate of return than rate base assets. (Emphasis added)

(AG BOE, 15) (emphasis added)

The AG BOE's use of the phrase "primary proposal," which implies that there is a secondary proposal relating to cost recovery of POR assets in this case, is misleading. It mischaracterizes Staff's direct testimony and incorrectly suggests that North Shore and Peoples Gas offered more than one cost recovery proposal in the instant case.

Foremost, in direct testimony, Ms. Phipps testified that she did not object to the Utilities' proposal because retail customers would neither directly nor indirectly guarantee recovery of the capital costs associated with implementing Rider POR plus a carrying charge that equals the Commission-authorized rate of return on rate base – *i.e.*, the POR assets. (ICC Staff Ex. 2.0, 2) She also noted that **if** Rider POR was changed such that any portion of the POR assets would be recoverable from retail customers, then she

would recommend the Commission authorize a lower rate of return for the POR assets than rate base assets because, in her judgment, POR assets are less risky than rate base assets and, thus, warrant a lower rate of return than rate base assets.” Id. The Utilities, however, did not submit any alternative cost recovery proposals for POR assets in this case.

Furthermore, the AG BOE mischaracterizes Staff’s testimony by suggesting that Staff testified that it is possible the Utilities will “face unrecovered capital costs associated with implementing the tariff at some point in time.” (AG BOE, 15) To the contrary, Staff witness Phipps explained how the Utilities propose to recover capital costs incurred to implement the POR program. Specifically, she noted (1) the proposed POR Application Charge ensures the Utilities recover from POR suppliers every dollar the utilities spend to implement the POR program; and (2) the proposed credit assurances the Utilities will require from POR suppliers ensure the Utilities will have security on hand in the event a POR supplier fails to pay its pro rata share of the POR Application Charge. (ICC Staff Ex. 2.0, 4-5) Thus, nothing in Ms. Phipps’ testimony suggests that the Utilities will “face unrecovered capital costs associated with implementing the tariff at some point in time,” as the AG BOE claims.

Finally, the AG BOE incorrectly states, “The Proposed Order fails to adopt Ms. Phipps recommendation as well.” (AG BOE, 16) Ms. Phipps recommended in her direct testimony that the Commission’s final order include language that describes Staff’s position in this case and, more specifically, how Rider POR is distinguishable from cost recovery mechanisms that require retail customers to effectively guarantee recovery of POR assets. (ICC Staff Ex. 2.0, 5) Contrary to the AG’s assertion, the ALJPO includes the language that Ms. Phipps set forth in her testimony. (ALJPO, 7)

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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